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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FRANCISCO MUNOZ MARQUEZ; LUIS A.
VIDAL

Plaintiffs,

vs.

JUVENTINO RODRIGUEZ; ROBERT
JAMES RODRIGUEZ; CHRISTINA
CAMARILLO; MARTHA V. RODRIGUEZ;
EILEEN RODRIGUEZ; and J&E HVAC,
INC.

Defendants

E-filing

Case No. 08-1702-HRL

COMPLAINT & DEMAND FOR JURY TRIAL

Federal FLSA Claim:

1. Failure to pay overtime and minimum wage: 29 U.S.C. §§ 207, 216(b), and 255(a);

California State Claims:

2. Failure to pay overtime and minimum wages (California Labor Code §§ 510; 1194(a); 1815);

3. Breach of Contract

4. Failure to Provide Accurate Pay Stubs and Records; Submitting False and Fraudulent Certified Payroll Records (California Labor Code §§ 226, 1174, 1776, IWC Wage Order No. 16 § 6);

5. Failure to Pay Wages Due at End of Employment (California Labor Code §§ 201, 203); and

6. Violation of California Business and Professions Code §§ 17200.

NATURE OF CLAIM

1. This is a action by construction workers who performed labor for Defendants in the craft of Sheet Metal / HVAC workers and who are bringing claims for unpaid wages, unpaid overtime wages, unpaid prevailing wages, interest, penalties, damages and attorneys' fees and costs arising out of the failure to pay all wages for labor discharged including but not limited to overtime and minimum wages as required by the Fair Labor Standards Act and California law. The Plaintiffs seek compensatory damages for unpaid wages in addition to liquidated damages under 29 U.S.C. § 216(b) for themselves and other opt-in workers in a representative capacity under the FLSA. Under pendant State Law claims Plaintiffs bring claims for waiting time penalties under California Labor Code § 203, a liquidated damages assessment under California Labor Code § 1194.2, penalties under California Labor Code § 226 (wage stub violations), attorney's fees, costs, and pre-judgment interest pursuant to California Labor Code §1194(a) and 29 U.S.C. § 216(b).

2. Plaintiffs', including Opt-In Consenters', claims can be summarized as follows:

(a) Preliminary and post-liminary labor claims (Overtime FLSA): When Plaintiffs, including Opt-In Consenters, were employed by Defendants, at various times they were required to show up to the shop and began to perform compensable labor and were not paid until they showed up to a job site. This included: (1) loading tools, material and equipment; (2) picking up paperwork or having work related meetings; (3) going to various vendors to purchase or pick up tools, material or equipment; and (4) transporting themselves, tools, material or equipment to a job site in a company truck. At the end of the day, Plaintiffs, including Opt-In Consenters, were not paid for their compensable labor to return the work trucks, materials, tools and themselves to the construction shop. This leads to overtime and wage claims as Plaintiffs' actual work week was over 40 hours and they were not paid overtime wages.

1 (b) Shaving or Reducing Work Hours (Overtime /FLSA): When Plaintiffs, including Opt-
2 In Consenters, worked in Prevailing Wage or Public Works projects, they were not paid for all
3 hours worked at the construction job site. This was done to reduce the rate of pay so that
4 workers would be paid at the correct prevailing wage rate for the craft of work they discharged
5 but for a lesser number of hours. This leads to FLSA overtime exposure as Plaintiffs' actual
6 work week of compensable labor was over 40 hours.

7 (c) Misclassification and Failure to pay prevailing wages (Overtime /FLSA): Plaintiffs,
8 including Opt-In Consenters, performed labor as plumbers on various Public Works
9 construction projects which require the payment of Prevailing Wages by operation of contract
10 and State Law. On those projects, Defendants failed to pay the Prevailing Wages, for the type
11 or classification of labor Plaintiffs, including Opt-In Consenters, discharged, as determined and
12 disseminated by the State of California's Department of Industrial Relations. This was done by
13 either paying workers the wrong classification to take advantage of a lower pay scale or by
14 failing to pay any recognizable prevailing wage and falsifying Certified Pay records. This leads
15 to FLSA overtime exposure as Plaintiffs' actual work week of compensable labor was over 40
16 hours.

17 SUBJECT MATTER JURISDICTION AND VENUE

18 3. This Court is a proper venue, since events giving rise to this lawsuit have occurred in
19 this district.

20 4. Subject matter jurisdiction of this action of this Court is based upon Fair Labor
21 Standards Act, 29 U.S.C. §§201 et. seq. and the pendant jurisdiction of this Court.

22 PARTIES

23 5. Plaintiffs FRANCISCO MUNOZ MARQUEZ; LUIS A. VIDAL AND Opt-In
24 Consenter Plaintiffs were and at all relevant times herein are individuals over the age of
25 eighteen employed by Defendants, one or all, during the statute of limitations in this action.

1 6. Opt-in Consenters are workers who are making similar claims and who have filed Opt-
2 In consent forms to join as Plaintiffs in this action pursuant to the special procedures for
3 representative actions under the Fair Labor Standards Act, 29 U.S.C. §§201 et. seq. Said Opt-In
4 Forms shall be filed with the Court and Plaintiffs reserve the right to file a Motion to Send said
5 workers Notice of their right to Opt-in to this action.

6 7. Plaintiffs are informed and believe and therefore allege, that at all times mentioned
7 herein Defendants JUVENTINO RODRIGUEZ; ROBERT JAMES RODRIGUEZ;
8 CHRISTINA CAMARILLO; MARTHA V. RODRIGUEZ; EILEEN RODRIGUEZ; and J&E
9 HVAC, INC. are engaged in the business of plumbing construction, maintenance and repair in
10 Northern California with particularity in Monterey, San Benito, Santa Cruz and Santa Clara
11 counties.

12 8. Defendant JUVENTINO RODRIGUEZ is the Responsible Managing Officer ("RMO"),
13 and license holder, of J&E MECHANICAL, INC. for licensing purposes with the State of
14 California Contractors State Licensing Board ("CSLB").

15 9. J&E MECHANICAL, INC. filed for Bankruptcy Protection and is not a party to this
16 action.

17 10. Defendant ROBERT JAMES RODRIGUEZ is the Responsible Managing Officer
18 ("RMO"), and license holder, of J&E HVAC, INC. for licensing purposes with the State of
19 California Contractors State Licensing Board ("CSLB").

20 11. Defendant JUVENTINO RODRIGUEZ worked as a dba sole proprietorship for a
21 company commonly called J & E Heating and Sheet metal.

22 12. Defendant EILEEN RODRIGUEZ was an Officer of V-FAB, INC. a corporation since
23 dissolved which was used in a Civil Conspiracy among Defendants to run payroll on certain
24 construction projects to among other things evade Prevailing Wage and Worker Compensation
25 laws.

1 13. Defendants JUVENTINO RODRIGUEZ; ROBERT JAMES RODRIGUEZ;
2 CHRISTINA CAMARILLO; EILEEN RODRIGUEZ; and MARTHA V. RODRIGUEZ are all
3 corporate officers some or all of the corporate Defendants.

4 14. Plaintiffs are informed and believe and thereupon alleged that Defendants were hired to
5 perform plumbing in execution of various Public Works projects ("PROJECTS") funded in
6 whole or in part by the public funds which contains a Prevailing Wage obligation by both
7 contract and operation of law.

8 15. Plaintiffs are informed and believe and based thereon allege that Defendants
9 JUVENTINO RODRIGUEZ; ROBERT JAMES RODRIGUEZ; CHRISTINA CAMARILLO;
10 MARTHA V. RODRIGUEZ; EILEEN RODRIGUEZ; and J&E HVAC, INC., have jointly
11 employed Plaintiffs, including Opt-In Consenters, as construction workers on the PROJECTS
12 and in other repair, maintenance and construction work. Plaintiffs are informed and believe and
13 based thereon allege that Defendants JUVENTINO RODRIGUEZ; ROBERT JAMES
14 RODRIGUEZ; CHRISTINA CAMARILLO; MARTHA V. RODRIGUEZ; EILEEN
15 RODRIGUEZ; and J&E HVAC, INC., are related and in common control of a same group of
16 people, that their employment with each other or corporate entities was not independent and
17 disassociated, but as result of arrangement between Defendants, some or all, in which each was
18 acting on behalf of or in the interest of the other in relation to the employment of each Plaintiff,
19 and opt-in consenter, and that at all times relevant herein stated, Plaintiffs, including Opt-In
20 Consenters, were under the control of all Defendants.

21 16. Plaintiffs are informed and believe and therefore allege that JUVENTINO
22 RODRIGUEZ; ROBERT JAMES RODRIGUEZ; CHRISTINA CAMARILLO; MARTHA V.
23 RODRIGUEZ; EILEEN RODRIGUEZ; and J&E HVAC, INC., constitute an integrated, unified
24 economic enterprise in bidding, contracting, managing labor relations with respect to various
25

1 construction projects, including the PROJERCTS for which Plaintiffs, including Opt-In
2 Consenters, were not properly paid minimum prevailing wage and/or overtime wages.

3 17. Plaintiffs hereinafter collectively refer to JUVENTINO RODRIGUEZ; ROBERT
4 JAMES RODRIGUEZ; CHRISTINA CAMARILLO; MARTHA V. RODRIGUEZ; EILEEN
5 RODRIGUEZ; and J&E HVAC, INC., as JOINT EMPLOYER DEFENDATS. Plaintiffs,
6 including Opt-In Consenters, seek joint and severable liability of JOINT EMPLOYER
7 DEFENDANTS for the wages owed Plaintiffs, including Opt-In Consenters.

8 18. Plaintiffs are informed and believe and therefore allege that certain Defendant
9 JUVENTINO RODRIGUEZ; ROBERT JAMES RODRIGUEZ; CHRISTINA CAMARILLO;
10 MARTHA V. RODRIGUEZ; EILEEN RODRIGUEZ and each of them, owned, controlled and
11 operated Defendants V-FAB; J&E MECHANICAL, INC.; and J&E HVAC, INC. Plaintiffs are
12 further informed and believe and based thereon allege that V-FAB; J&E MECHANICAL, INC.;
13 and J&E HVAC, INC. were at various times operated in such that each was the alter-ego of the
14 other Defendants, that a unity of interest exists between them such way that in equity any
15 separateness of form should be disregarded to prevent fraud and injustice.

16 19. Plaintiffs are informed and believe and therefore allege that adherence to the separate
17 existence of V-FAB; J&E MECHANICAL, INC.; and J&E HVAC, INC. as entities distinct
18 from each other, and distinct from Defendant JUVENTINO RODRIGUEZ; ROBERT JAMES
19 RODRIGUEZ; CHRISTINA CAMARILLO; MARTHA V. RODRIGUEZ; EILEEN
20 RODRIGUEZ, and each of them, would permit an abuse of the corporate privilege and would
21 sanction a fraud in that said Defendants, and each of them, while acting as principle owners,
22 shareholders, agents, officers employees and/or servants of V-FAB; J&E MECHANICAL,
23 INC.; and J&E HVAC, INC. knowingly performed the following: (1) engaged in wage and
24 hour fraud against employees of V-FAB; J&E MECHANICAL, INC.; and J&E HVAC, INC.,
25 including Plaintiffs; (2) acted to conceal the fact that Plaintiffs and/or their fellow employees

1 were not paid prevailing wages by submitting falsified payroll records to the awarding agencies;
 2 (3) underbid the subcontracts and/or contracts for the PROJECTS with knowledge that the bid
 3 was insufficient to pay Plaintiffs and/or other fellow employees' prevailing wages; and (4)
 4 underbid the subcontracts and/or contracts for the PROJECTS in order to gain an unfair
 5 advantage over the competition in being awarded the subcontract and/or contract for the
 6 PROJECTS. Said Defendants' acts or omissions thereby subjected JOINT EMPLOYER
 7 DEFENDANTS to criminal and civil liability for its failure to pay minimum prevailing wages,
 8 tax fraud, insurance fraud, and numerous other wage and hour violations.

9 20. Plaintiffs are informed and believe and therefore allege that certain JOINT EMPLOYER
 10 DEFENDANTS are jointly and severally liable under for the underpayment of prevailing wages
 11 and resulting assessments under California Labor section 1722.1 which states:

12 For the purposes of this chapter, "contractor" and
 13 "subcontractor" include a contractor, subcontractor, licensee,
 14 officer, agent, or representative thereof, acting in that capacity,
 15 when working on public works pursuant to this article and Article 2
 16 (commencing with Section 1770).

17 GENERAL ALLEGATIONS

18 21. JOINT EMPLOYER DEFENDANTS employed Plaintiffs, including Opt-In Consenters,
 19 at all relevant times within the statute of limitations in this action various the PREVAILING
 20 WAGE PROJECTS and on other construction, service or maintenance repair work.

21 22. JOINT EMPLOYER DEFENDANTS compensated Plaintiffs, including Opt-In
 22 Consenters, for their labor on the PREVAILING WAGE PROJECTS at a rate of pay below the
 23 prevailing wage rate of pay for the classification of their labor. This was accomplished by
 24 various schemes including but not limited to: (1) not paying preliminary and postliminary labor;
 25 (2) reducing or shaving the number of hours worked on any PREVAILING WAGE

1 PROJECTS; and (3) paying the incorrect prevailing wage rate for the classification of work
2 discharged.

3 23. JOINT EMPLOYER DEFENDANTS did not compensate Plaintiffs, including Opt-In
4 Consenters, for their labor by making any fringe benefit contributions that could offset the
5 prevailing wage rate of pay for the classification of their labor.

6 24. JOINT EMPLOYER DEFENDANTS did not compensate Plaintiffs, including Opt-In
7 Consenters, for their labor during their entire employment by paying overtime wages when due
8 and owing.

9 25. JOINT EMPLOYER DEFENDANTS did not compensate Plaintiffs, including Opt-In
10 Consenters, for their labor by paying for all hours worked ("SHAVING OF HOURS").
11 Typically JOINT EMPLOYER DEFENDANTS had Plaintiffs and other workers work show up
12 to the shop before the scheduled start time and had them begin performing compensable labor.
13 At the end of a work day, when Plaintiffs, including Opt-In Consenters, were out on the field on
14 a construction project, JOINT EMPLOYER DEFENDANTS stopped paying Plaintiffs,
15 including Opt-In Consenters, for their work and did not pay them for the time it took them to
16 load tools or equipment, drive back to the shop or be driven back to the shop, and unload tools
17 or equipment.

18 26. JOINT EMPLOYER DEFENDANTS misclassified Plaintiffs, including Opt-In
19 Consenters, as Laborers, to pay them a lower pay scale, when they worked as Plumbers and
20 earned a higher pay scale for the discharge of their labor on Prevailing Wage projects.

21
22 **COUNT ONE**
FEDERAL CLAIM

23 *Violation of the Fair Labor Standards Act*

24 29 U.S.C. §§ 207, 216(b), and 255(a)

25 *Failure to Pay Overtime Wages and Minimum Wages*

1 27. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-26 as if fully stated
2 herein.

3 28. At all relevant times herein, Plaintiffs' employment was subject to the provisions of the
4 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, *et seq.*

5 29. JOINT EMPLOYER DEFENDANTS are enterprises engaged in commerce or in the
6 production of goods for commerce as defined by 29 U.S.C. § 203 (r) & (s) and related
7 Department of Labor regulations.

8 30. JOINT EMPLOYER DEFENDANTS routinely required and/or suffered or permitted
9 Plaintiffs, including Opt-In Consenters, to work more than 40 hours per week, sometimes
10 without paying them any wages at all for such overtime work, and routinely without paying
11 them any overtime premium for hours worked in excess of 40 hours per week.

12 31. JOINT EMPLOYER DEFENDANTS routinely failed to pay Plaintiffs, including Opt-
13 In Consenters, the prevailing wage for their labor on the PROJECTS which are Public Works
14 Project, pursuant to California law, and require the payment of the Prevailing Wage which is a
15 minimum wage of the State of California.

16 32. In failing to pay Plaintiffs, including Opt-In Consenters, overtime wages at one-and-
17 one-half times their regular rate of pay, including hours for which Plaintiffs, including Opt-In
18 Consenters, received no compensation, and in failing to pay the minimum wage JOINT
19 EMPLOYER DEFENDANTS willfully violated the FLSA.

20 33. As a direct and proximate result of defendants' failure to pay proper wages under the
21 FLSA, Plaintiffs, including Opt-In Consenters, incurred general damages in the form of lost
22 overtime wages and lost minimum wages in an amount to be proved at trial.

23 34. Defendants intentionally, with reckless disregard for their responsibilities under the
24 FLSA, and without good cause, failed to pay Plaintiffs, including Opt-In Consenters, their
25 proper wages, and thus defendants are liable to Plaintiffs, including Opt-In Consenters, for

liquidated damages in an amount equal to their lost wages over a three year statute of limitations pursuant to 29 U.S.C. §§ 216(b) & 255(a) of the FLSA.

35. Plaintiffs, including Opt-In Consenters, were required to retain legal assistance in order to bring this action and, as such, are entitled to an award of reasonable attorney's fees pursuant to the FLSA.

COUNT TWO PENDENT STATE CLAIM

*Violation of California Labor Code §§ 510, 1771-1810, 1194, 1194.2 & 1197
Failure to Properly Pay Minimum Wages and Overtime on Public Works and Private
Construction Projects*

36. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-35 as if fully stated herein.

37. At all times mentioned herein, Plaintiffs, including Opt-In Consenters, were employed in execution of the PROJECTS which was and is subject to the prevailing wage laws of the State of California pursuant to Labor Code §§ 1771 & 1774, regarding work undertaken on public construction projects. Pursuant to Labor Code §§ 1771 & 1774, all employees, including Plaintiffs, including Opt-In Consenters,, hired in execution of PROJECTS, shall be paid for their work on the PROJECTS not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. Said Prevailing Wage rates are disseminated by the State of California's Department of Industrial Relations and pursuant to California laws and Regulations all contractors in the execution of a public works construction project are mandated by law to pay these minimum wages.

38. At all times mentioned herein, JOINT EMPLOYER DEFENDANTS, and each of them, were subject to the prevailing wage laws of the State of California pursuant to Labor Code §§ 1771, 1774 and 1815, regarding work undertaken on public works construction projects. Pursuant to Labor Code §§ 1771, 1774 and 1815, JOINT EMPLOYER DEFENDANTS, and

1 each of them, had a duty to pay their employees on such projects, including Plaintiffs who were
2 employed in the execution of the contract of the PROJECTS, not less than one and one-half
3 times their basic prevailing rate of pay for holiday and overtime work, as specified in annual
4 and semi-annual bulletins published by the California Department of Industrial Relations.

5 39. At all times mentioned herein, JOINT EMPLOYER DEFENDANTS, and each of them,
6 were subject to the overtime wage laws of the State of California pursuant to Labor Code §510,
7 regarding work undertaken on private construction projects. Pursuant to Labor Code §510,
8 JOINT EMPLOYER DEFENDANTS, and each of them, had a duty to pay their employees,
9 including Plaintiffs, who worked on such private constructions projects not less than the one and
10 one-half times their contractually agreed upon regular rate of pay for non-public works
11 construction projects for all hours worked in excess of 8 hours a day and 40 hours a week.

12 40. Plaintiffs are informed and believe and based thereon contend that for work performed
13 on PROJECTS, they were paid less than the required minimum prevailing rate for non-holiday
14 and non-overtime hours and less than the required minimum prevailing rate for holiday and
15 overtime work as required by Labor Code §§1771, 1774 and 1815; and for non-public works
16 construction projects they were paid less than one and one-half times their regular rate of pay, or
17 not at all, for the hours worked in excess of 8 hours a day and 40 hours a week as required by
18 California Labor Code § 510.

19 41. Plaintiffs, including Opt-In Consenters, therefore contend that for their work performed
20 on PROJECTS, the said JOINT EMPLOYER DEFENDANTS, and each of them, violated
21 Labor Code §§ 1771, 1774 and 1815, specifically by failing and refusing to comply with the
22 statutory duty to pay Plaintiffs' or to ensure that Plaintiffs, including Opt-In Consenters, be
23 paid, prevailing wages and prevailing wage for holiday and overtime work as required by the
24 contracts and by statute. Plaintiffs, including Opt-In Consenters, also contend that for non-
25 public works construction projects, the said JOINT EMPLOYER DEFENDANTS, and each of

1 them, violated Labor Code §510, specifically by failing and refusing to comply with the
 2 statutory duty to pay Plaintiffs, including Opt-In Consenters, one and one-half times their
 3 regular rate of pay for hours worked in excess of 8 hours a day or 40 hours a week as required
 4 by statute.

5 42. Pursuant to Labor Code § 1194, for their work on PROJECTS, Plaintiffs, including Opt-
 6 In Consenters, seek as earned but were not paid minimum prevailing wages and required
 7 minimum prevailing wage for holiday and overtime work; and for their work on non-pubic
 8 works construction projects, Plaintiffs, including Opt-In Consenters, seek as earned but unpaid
 9 overtime compensation for hours worked in excess of 8 hours a day or 40 hours a week.
 10 Plaintiffs, including Opt-In Consenters, are entitled to and therefore request an award of pre-
 11 judgment interest on the unpaid wages set forth herein. Plaintiffs, including Opt-In Consenters,
 12 also seek an assessment under Labor Code § 1194.2.

13 43. Plaintiffs, including Opt-In Consenters, have incurred, and will continue to incur,
 14 attorneys' fees in the prosecution of this action and therefore demand such reasonable attorneys'
 15 fees and costs as set by the court pursuant to California Labor Code § 1194.

16 **COUNT THREE**
 17 **PENDENT STATE CLAIM**
 18 **BREACH OF CONTRACT -THIRD PARTY BENEFICIARY**

19 44. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-43 as if fully stated
 20 herein.

21 45. Plaintiffs are informed and believe and based thereon allege that when they worked on
 22 various PROJECTS, there was a written CONTRACT in place, wherein workers on the
 23 PROJECTS were to be paid the applicable Prevailing Rate.

24 46. Plaintiffs are informed and believe and based thereon allege that the CONTRACTS
 25 required JOINT EMPLOYER DEFENDANTS, and each of them, to comply with all applicable
 legal requirements for work undertaken on public works projects and ensure its subcontractors

1 to comply with all such laws, including payment of prevailing wages pursuant to Labor Code §§
2 1194 and 1770 et seq.

3 47. Except as excused by the wrongful conduct of Defendants, Plaintiffs, including Opt-In
4 Consenters, have performed all conditions required to be performed by Plaintiffs, including Opt-
5 In Consenters, under the CONTRACTS.

6 48. The CONTRACTS are valid, enforceable, and was entered into with mutuality of
7 contract, by an offer and acceptance, and for consideration.

8 49. Plaintiffs are informed and believe and based thereon allege that JOINT EMPLOYER
9 DEFENDANTS, and each of them, breached the CONTRACTS by failing to pay prevailing
10 wages as required by the CONTRACTS, and as required by California law, and by failing to
11 submit truthful and accurate Certified Payroll Records to the public bodies awarding the
12 CONTRACTS. Plaintiffs, including Opt-In Consenters, were damaged by the failure of JOINT
13 EMPLOYER DEFENDANTS, and each of them, to pay prevailing wages.

14 50. Plaintiffs have standing as intended third-party beneficiaries of the CONTRACTS to
15 assert said claims.

16 51. As a result of JOINT EMPLOYER DEFENDANTS' breach of the CONTRACTS, as
17 more fully set forth herein, Plaintiffs, including Opt-In Consenters, were damaged in an amount
18 to be proved at trial.

19 52. Plaintiffs seek as contractual damages earned but unpaid wages being the difference
20 between the amount paid and the prevailing wage rate as determined by the Director of
21 Industrial Relations.

22 53. Plaintiffs, including Opt-In Consenters, are entitled to and therefore request an award of
23 pre-judgment interest on the unpaid wages set forth herein.

24 54. Plaintiffs are informed and believe and based thereon allege that the CONTRACTS at
25 issue provided that should a dispute arise in connection with the CONTRCATS that attorneys

1 fees would be awarded to the prevailing party. Plaintiffs, including Opt-In Consenters, have
 2 incurred, and will continue to incur attorney fees in the prosecution of this action and therefore
 3 demand such reasonable attorneys' fees as set by the court.

4 **COUNT FOUR**
 5 **PENDENT STATE CLAIM**
 6 *California Labor Code § 226 & 1174*
 7 *Wage Stubs and Record Keeping*

8 55. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-54 as if fully stated
 9 herein.

10 56. At all times relevant hereto, JOINT EMPLOYER DEFENDANTS were subject to the
 11 provisions of IWC Wage Order 16-2001, and Labor Code §§ 226 and 1174, which require
 12 employer to keep written daily records of each of its employee's hours of work and meal breaks
 13 and to maintain such records for at least three years; and to provide each employee with written
 14 periodic wage payment setting forth, among other things, the dates of labor for which payment
 15 of wages is made, the total hours of work for the pay period, the gross and net wages paid, all
 16 deductions from those wages, and the name and address of the employer.

17 57. JOINT EMPLOYER DEFENDANTS knowingly and intentionally failed to provide
 18 Plaintiffs, including Opt-In Consenters, with accurate, itemized wage statements in compliance
 19 with Labor Code §226. Such failures in JOIN EMPLOYER DEFNDANTS' itemized wage
 20 statements included, among other things, not accurately showing the number of all hours
 21 worked, including overtime hours, in each pay period and/or incorrectly reporting gross wages
 22 earned.

23 58. As a direct result of JOINT EMPLOYER DEFNDANTS' failure, Plaintiffs, including
 24 Opt-In Consenters, were injured and entitled to recover an amount to be proved at trial for
 25 actual damages, including that measured by the unpaid wages, of not less than \$100.00 for each
 violation up to \$4,000.00.

59. Plaintiff has incurred, and will continue to incur attorney fees in the prosecution of this action.

COUNT FIVE
PENDENT STATE CLAIM
California Labor Code Section 203
Waiting Time Penalties

60. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-59 as if fully stated herein.

61. At the time Plaintiffs' employment with Defendants was terminated, JOINT EMPLOYER DEFENDANTS owed Plaintiffs, including Opt-In Consenters, certain unpaid overtime wages as previously alleged, and such wages owed each Plaintiff were ascertainable at the time of termination.

62. Failure to pay wages owed at an employee's termination as required by Labor Code §201 subjects the employer the payment of a penalty equaling up to 30 days wages, as provided for in Labor Code § 203.

63. As of this date, JOINT EMPLOYER DEFENDANTS have failed and refused, and continue to fail and refuse, to pay the amount due, thus making each such defendants liable to Plaintiffs, including Opt-In Consenters, for penalties equal to thirty (30) days wages.

COUNT SIX
PENDENT STATE CLAIM
Violation of California Business & Professions Code §17200
Restitution for Unfair Business Practices

64. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-63 as if fully stated herein.

65. At all times relevant herein, Plaintiffs' employment with JOINT EMPLOYER DEFENDANTS was subject to FLSA, California Labor Code and applicable Wage Orders promulgated by the California Industrial Welfare Commission, which required all employees to be paid certain minimum prevailing wages, overtime for work performed in excess of 40 hours

1 per week or 8 hours per day unless specifically exempted by the law, and also required
2 Plaintiffs, including Opt-In Consenters, to be paid premium pay for missed rest periods.

3 66. At all times relevant herein, the employer of Plaintiffs, JOINT EMPLOYER
4 DEFENDANTS were subject to the California Unfair Trade Practices Act (California Business
5 and Professions Code § §17000 et seq.), but failed to pay the Plaintiffs, including Opt-In
6 Consenters, certain minimum prevailing wages, overtime pay as required by applicable state and
7 federal laws and failed to pay premium pay for missed meal/rest periods, to all of which
8 Plaintiffs, including Opt-In Consenters, were legally entitled, with JOINT EMPLOYER
9 DEFENDANTS keeping to themselves the amount which should have been paid to Plaintiffs,
10 including Opt-In Consenters.

11 67. In doing so, JOINT EMPLOYER DEFENDANTS violated California Unfair Trade
12 Practices Act, Business and Professions Code §17200, et seq. by committing acts prohibited by
13 applicable California Labor Code provisions, IWC Wage Orders, and the FLSA, and thus giving
14 them a competitive advantage over other employers and businesses with whom JOINT
15 EMPLOYER DEFENDANTS were in competition and who were in compliance with the law.

16 68. As a direct and proximate result of JOINT EMPLOYER DEFENDANTS' violations
17 and failure to pay the required minimum prevailing wages and overtime pay, the Plaintiffs'
18 rights under the law were violated and the Plaintiffs, including Opt-In Consenters, incurred
19 general damages in the form of unpaid wages in amount to be proved at trial.

20 69. JOINT EMPLOYER DEFENDANTS had been aware of the existence and requirements
21 of the Unfair Trade Practices Act and the requirements of state and federal wage and hour laws,
22 but willfully, knowingly, and intentionally failed to pay Plaintiffs, including Opt-In Consenters,
23 minimum prevailing wages and overtime pay due.

1 70. Plaintiffs, having been illegally deprived of the minimum prevailing wages and
2 overtime pay to which they were legally entitled, herein seek restitution of such unpaid wages
3 pursuant to the Business and Professions Code §17203.

4 71. Plaintiffs bring this count on their own behalf only, and as a claim for restitution, over a
5 four year statute of limitations.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for the following relief:

8 1. For compensatory damages per for all wages earned but not paid, all overtime wages
9 earned and not paid and the failure to pay Prevailing Wages and applicable fringe benefits
10 which are an item of prevailing wages in the amount to be proved at trial;

11 2. For liquidated damages per the FLSA equal to unpaid overtime and minimum wages;

12 3. For unpaid premium pay for rest periods which were not authorized or permitted;

13 4. For restitution of unpaid minimum prevailing wage, overtime pay and meal/rest period
14 premium pay;

15 5. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid
16 minimum wage under California Labor Code §§ 1194(a);

17 6. For "waiting-time" penalties under California Labor Code §203.

18 7. For "liquidated damages" under California Labor Code §1194.2 for the failure to pay
19 minimum wages;

20 8. For reasonable attorney's fees pursuant to California Labor Code §1194(a) and 29 U.S.C.
21 §216(b) of the FLSA;

22 9. For costs of suit herein;

23 10. For actual damages or a statutory penalty for non-compliant wage stubs; and
24
25

1 11. For such other and further relief as the Court may deem appropriate.
2 Dated: March 25, 2008

3 Respectfully submitted,

4
5 By: 

6 TOMAS E. MARGAIN
Attorneys for Plaintiffs

7 **DEMAND FOR JURY TRIAL**

8 Please take notice that Plaintiffs herein demand trial by jury in this action.
9 Dated: March 25, 2008

10 Respectfully submitted,

11
12 By: 

13 TOMAS E. MARGAIN
Attorneys for Plaintiffs

14
15 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

16 Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date, other than
17 the named parties, there are no such interested entities or persons to report.
18

19 Dated: March 25, 2008

20 Respectfully submitted,

21
22 By: 

23 TOMAS E. MARGAIN
24 Attorneys for Plaintiffs
25

JS 44 - No. CALIF. (Rev. 4/97)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I. (a) PLAINTIFFS

FRANCISCO MUNOZ MARQUEZ; LUIS A. VIDAL

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Monterey

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

TOMAS E. MARGAIN, Bar No. 193555
1550 Bryant Street, Suite 725
San Francisco, CA 94103 Telephone: 415-861-9600

DEFENDANTS

Juventino Rodriguez; Robert James Rodriguez;
Christina Camarillo; Martha V. Rodriguez; Eileen
Rodriguez; And J&E HVAC, Inc.COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED. Monterey

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For diversity cases only)

- | | | | |
|---|--|---|--|
| Citizen of This State | PTF DEF
<input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF DEF
<input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 165 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 791 Empl./Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 OWB/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 460 Commercial/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

29 U.S.C. 201, et seq.
Wage & Hour -- overtime violation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ 500,000.00
UNDER F.R.C.P. 23☒ CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY) ☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE

DATE 3/25/08

SIGNATURE OF ATTORNEY OF RECORD